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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: **MAY 25 2006**

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was an assistant electrical engineer at Argonne National Laboratory (“Argonne”). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMAct), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner describes his work:

I am currently a key researcher in [the] nuclear technology division at the Argonne National Laboratory. . . . I am currently spearheading two vital research projects that are directly funded by the Department of Energy. One project is to develop the proliferation resistant reactors and fuel technology. The other project is recently initiated, which is to design distributed sensor networks for protecting large scaled systems such as metropolitan cities. The results of the first research project are used or can be potentially applied in the safe and affordable production of clean nuclear energ[y] systems. . . . The impact of the second project is clear and significant in improving the national defense and homeland security.

My past projects conducted at the University of Michigan, Ann Arbor during my doctoral study are also funded by federal funding agencies. . . . The project funded by US Army Research Office investigated the approaches and design methodologies to support future Army communication systems. National Science Foundation supported project conducts fundamental research on novel formal generic methodologies for designing distributed software systems applicable to manufacturing, communication networks, transportation, electric power systems, etc.

(Citations omitted.) A “Position Description” included in the record indicates that the “Basic Purpose” of the position is as follows:

Electrical Engineer candidate to conduct research and development (R&D) activities in quantitative assessment methods, nuclear operations modeling, sensors/data acquisition systems, hardware development and interfaces, and discrete event systems (DES) theory and applications. Efforts will be directed toward real-world problems in the areas of modeling, monitoring, analysis, control, optimization, and simulation, with emphasis on nuclear industry applications.

The petitioner submits five witness letters. [REDACTED], director of the Nuclear Technology Division at Argonne, offers only a general appraisal of the petitioner's work and talents:

[The petitioner's] work at Argonne is developing the mathematical basis for new, innovative methods for controlling and accounting for nuclear material in next generation nuclear reactors. . . . I believe [the petitioner's] scientific talent and work will prove to be "world class" and that his continued employment at Argonne is in the national interest.

Argonne's success has relied on the careful selection of its research staff. We conducted a nation-wide search to find a suitable candidate [for the petitioner's] position. Only a handful of candidates came close to meeting our requirements. Of those, [the petitioner] came out at the top based on his academic accomplishments, the quality and relevance of his research at the University of Michigan, and his letters of recommendation. [The petitioner] has met our expectations. He also possesses critical skills and unique interdisciplinary expertise to support our expanded missions and future projects. His performance in his first year at the Laboratory confirmed our initial assessment of his capabilities. Our progress in the research areas he is working in would be significantly hampered without his involvement.

[REDACTED] section manager of Argonne's Measurements and Analysis Section, offers a similar assessment:

During the past year, [the petitioner] has conducted research and development in the areas of modeling, monitoring, analysis, control, optimization, and simulation applied to nuclear material control for advanced nuclear reactor system applications. When [the petitioner's] R&D project progresses to implementation, it will significantly improve the ability to monitor and control critical processes material in nuclear reactor and nuclear fuel processing systems. . . .

From the beginning, [the petitioner] has approached this work with skill, vigor and extraordinary insight. We have been exceedingly pleased with his results so far. His work has been exceptional and the initial results have drawn favorable and encouraging feedback from various sources both within and outside the Laboratory.

[REDACTED] associate chair of the Department of Electrical Engineering and Computer Science at the University of Michigan (UM), Ann Arbor, states:

[The petitioner] was a research assistant in my group from May 1999 to August 2002. He was an essential part of my research projects. My research projects have for objective to improve the state-of-the-art in the design of high-performance automated systems in key areas such as manufacturing, communication networks, transportation, and electric power systems. . . .

[The petitioner] made outstanding contributions in the projects he participated in. . . . He was very productive and remarkably creative. As a consequence, his research has generated many original and breakthrough contributions which are widely recognized and highly valued in the international community. . . .

[The petitioner's] comprehensive knowledge of interdisciplinary fields such as systems, control, and computer science makes him unique among his peers.

UM Professor [REDACTED] states that the petitioner made "very substantial" contributions to a "project [that] addressed the need for future Army communication systems." Prof. Tenekezis does not specify the nature of those contributions.

The final initial witness is [REDACTED] of Wayne State University, who met the petitioner during one of [REDACTED] frequent visits to UM. [REDACTED] states that the petitioner "has conducted research to explore and understand various control and monitoring issues on systems with decentralized information. These problems are closely related to safety-critical systems. . . . From the beginning, he has approached the issues with extraordinary insight and skill. [The petitioner] has produced original and insightful research contributions consistently."

The petitioner submits a copy of "A Proposal to the US Army Research Office on Low Energy Electronics Design For Mobile Platforms." This proposal lists ten "Investigators" on its cover page, including some of the petitioner's witnesses, but the petitioner is not one of these ten named investigators. Another proposal identifies two investigators, neither of whom is the petitioner.

The petitioner submits copies of his articles and other scholarly writings, as well as "[c]opies of two journal papers, 6 conference proceedings, and one research proposal citing and mentioning my papers." Of these nine citing documents, one was written by [REDACTED] citing his own work with the petitioner. Two other citing articles/presentations are by [REDACTED], who has collaborated with the petitioner at Argonne, and two more are by one of [REDACTED]'s collaborators. Two research groups account for the remaining four citing articles and presentations.

The petitioner observes that he has performed peer review of manuscripts by other researchers. As evidence of this, the petitioner submits a "List of Reviewers" from *IEEE Transactions on Robotics and Automation*. The petitioner has not submitted the complete list. The two pages submitted contain, together, approximately 300 names. The page numbers indicate that two pages are missing from this list, suggesting at least another 300 further names. The list covers only those individuals who reviewed articles for this one journal between October 1999 and September 2000. The sheer number of reviewers involved in one year's output for a single

journal does not readily suggest that participation in peer review is a privilege reserved for particularly well-regarded scientists.

The director issued a request for evidence (RFE), instructing the petitioner to submit further documentation regarding the petitioner's work and the significance of the petitioner's contributions to that work. In response, the petitioner state that he now works for Idaho National Laboratory, created by Argonne's merger with the Idaho National Engineering and Environmental Laboratory. The petitioner states:

I am currently spearheading a vital research project that is supported by the Department of Homeland Security . . . to design distributed sensor networks for protecting large scaled systems such as critical infrastructures of metropolitan cities. I seek to advance fundamental knowledge in the areas of sensor design, materials, and concepts including sensors for toxic chemicals, explosives, and biological agents, sensor networking systems, and the interpretation and use of sensor data in decision-making processes.

The petitioner had not yet begun working on the above project at the time he filed the petition. If the petitioner was not already eligible when he filed the petition, his work on the above project cannot retroactively make him eligible as of the filing date. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971). At best, this information shows that the petitioner has continued to engage in research at a national laboratory. It also indicates that the petitioner has ceased to work on the nuclear technology project that formed the original basis of his waiver claim, and from which the petitioner's witnesses claimed he could not be spared.

The petitioner asserts that the number of papers citing his work has climbed to 39. The petitioner submits copies of articles and manuscripts to corroborate this assertion. Some of the articles were submitted as unpublished manuscripts. Most of the citations are independent rather than self-citations by the petitioner or his collaborators.

The director denied the petition, stating "the record does not establish that the petitioner's accomplishments distinguish him from other scientists in his field of endeavor." The director stated: "the petitioner's work has not been heavily cited by others outside of his group. Frequent citation by independent researchers demonstrates widespread interest in, and reliance on a scientist's work. It is noted that the manuscripts and citations that were published after August 26, 2003 were not considered in these proceedings; nor were documents that did not appear to have been published."

On appeal, the petitioner states that the director failed to give due consideration to his "rapidly increasing number of citations." The director's reluctance to consider citations in unpublished manuscripts is understandable; such evidence could easily be manufactured. We cannot, however, so readily dismiss citations appearing in articles published after the petition's August 2003 filing date. Most of these articles cite articles by the petitioner that, in turn, had been published prior to the filing date. Thus, these articles demonstrate the ongoing impact of work that the petitioner had already performed before he filed the petition. The waiver ultimately rests not on the citations themselves, but on the impact of the petitioner's work; the citations are simply an objective means by which to gauge that impact. Because the work that had this impact was done prior to the filing date, *Izummi* and *Katigbak* present no impediment to the consideration of the

citations. The record supports the petitioner's assertion that independent citation of his published work has increased almost exponentially, demonstrating widespread reliance on that work.

The petitioner offers additional, less persuasive arguments, such as his "best paper" awards from various conferences. Such evidence could lend support to a claim of exceptional ability in the sciences, pursuant to 8 C.F.R. § 204.5(k)(3)(ii)(F), but exceptional ability by itself does not establish eligibility for the waiver.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.